

**VOLUNTARY CLEANUP CONTRACT
04-[PCAS#-RP]**

**IN THE MATTER OF
[SITE NAME], [COUNTY]
and
[COMPANY]**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and [Company name], pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C., §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the property located at [Location], South Carolina. [Site Name/The property] specifically includes [Number of acres] acres and is bounded generally by [Location and description of the property]. [A legal description of the property is attached to the Contract as Appendix A.]

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, 42 U.S.C., §§ 9601, et seq., pursuant to the HWMA, S.C. Code Ann. § 44-56-200, including any amendments, or in the regulations promulgated thereunder.

- A. "Department" shall mean the South Carolina Department of Health and Environmental Control.
- B. "Contract" shall mean this Voluntary Cleanup Contract.
- C. "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease,

behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- D. “The Site” shall mean [the facility located at (street address, town)], South Carolina, and all areas where a contaminant has been released, deposited, stored, disposed of, placed or otherwise comes to be located; “Site” does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- E. “[Abbreviated company name]” shall mean [Official company name].
- F. “Work Plan” shall mean the [Removal Action Work Plan, Remedial Investigation/Feasibility Study Work Plan (RI/FS), Remedial Design/Remedial Action Work Plan (RD/RA), etc.].
- G. “Responsible Party” shall mean:
 - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
 - b. Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;
 - c. Any person who by contract, settlement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and

- d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.
 - H. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program.
 - I. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment
 - J. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Act, S.C. Code Ann. § 44-56-710, et seq. (2002).
2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:
- A. [Various details of the Site: owner, operator, past assessment/remedial activities.]
 - B. [Proposed future use of the Site.]
 - C. [Etc.]
3. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its parents, successors, assigns, and subsidiaries, and upon any successor agency of the State of South Carolina that may have responsibility for and jurisdiction over the subject matter of this Contract.

4. [The Company] agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be prepared in accordance with industry standards and endorsed by a duly licensed Professional Engineer (P.E.) and/or Professional Geologist (P.G.) in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

A. Conduct a Remedial Investigation (RI) to determine the source, nature, and extent of contamination at the Site.

B. Submit to the Department an RI Report (to include a Baseline Risk Assessment) in accordance with the schedule in the approved RI/FS Work Plan. Within a reasonable period of time, the Department shall review the report for determination of completion of the RI and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to [the Company], and [the Company] shall subsequently conduct additional field investigation to further determine the source, nature, and extent of contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to [the Company] a letter indicating that revision of the report is necessary. Within fifteen (15) days of receipt of such letter from the Department, [the Company] shall submit a revised report addressing the Department's comments.

C. If determined necessary by the Department, conduct a Feasibility Study to evaluate remedial alternatives for addressing contamination at the Site.

5. The Work Plan shall include the names, addresses, and telephone numbers of the

consulting firm, the South Carolina certified analytical laboratory, and [the Company]'s contact person for matters relating to this Contract. [The Company] will notify the Department in writing of changes in the contractor or laboratory. Attached to the Work Plan but under separate cover shall also be a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Department will review the Work Plan and will notify [the Company] in writing of any deficiencies in the Work Plan, and [the Company] shall respond in writing within thirty (30) days to the Department's comments.

6. Within [progress report due date] of the execution date of this Contract and once a month thereafter, [the Company] shall submit to the Department a written progress report that must include the following: (a) actions taken under this Contract during the previous reporting period; (b) actions scheduled to be taken in the next reporting period; (c) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. As provided for by S.C. Code Ann. § 44-56-740(B) and S.C. Code Ann. § 44-56-200 (2002), [the Company] shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice.

8. Subject to the provisions of Paragraph 13 of this Contract, nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, that the Department may have against any person, firm, corporation, potentially responsible party, or other entity not a signatory of this Contract.

9. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

10. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). [The Company] shall ensure that a copy of this Contract is provided to any current lessee or sublessee on the property as of the execution date of this Contract and shall ensure that any subsequent leases, subleases, assignments or transfers of the property are consistent with this Paragraph.

11. [The Company] shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by [the Company] pursuant to this Contract.

12. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740 (2002) and the technical intent of the National Contingency Plan. Costs associated with public participation, [e.g., public notices(s), building and equipment rental(s) for public meetings, etc.] will be paid by [the Company].

13. Upon successful completion of the terms of this Contract and the approved Work Plan as referenced in Paragraph 4 above, [the Company] shall submit to the Department a written notice of completion. Once the Department acknowledges satisfactory completion

of the Contract terms, the Department, pursuant to S.C. Code Ann. § 44-56-740(B)(1) (2002), will give [the Company] a Certificate of Completion that provides a covenant not to sue [the Company], its parents, successors, subsidiaries, or assigns for the matters satisfactorily completed and specifically covered in this Contract.

14. If hazardous substances in excess of residential standards exist at the Site after [the Company] has completed the actions required under this Contract, land use restrictions shall be defined in the Certificate of Completion and the Department shall enter into a restrictive covenant with [the Company]. Upon the Department's approval of the items outlined therein, [the Company] shall file this restrictive covenant with the [Register of Mesne Conveyance or Register of Deeds] in [name of Site county] County, and a copy of the filed restrictive covenant shall be attached to the Certificate of Completion and shall be incorporated into this Contract as an appendix. With the approval of the Department, the restrictive covenant may be modified in the future if: (a) additional remedial activities are carried out that meet appropriate clean up standards at that time; (b) a significant change in law requiring remediation occurs; or (c) circumstances change such that the restrictive covenant would no longer be applicable. The restrictive covenant shall be signed by the Department and representatives of [the Company] and witnessed, signed, and sealed by a notary public.

15. Nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against [the Company] for any matter not expressly included in this Contract. In consideration of the Department's covenant not to sue, [the Company] agrees not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

16. [The Company] and the Department each reserve the right to unilaterally terminate

this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should [the Company] elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that no environmental or physical hazards exist at the Site as a result of [the Company]'s actions. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Site that are inconsistent with the terms of this Contract; (b) failure to complete the terms of this Contract; or (c) further contamination of the Site by [the Company].

17. If business activities on Site or use of the Site change such that they are inconsistent with the intent of this Contract, then the covenant not to sue [as provided by S.C. Code Ann. § 44-56-740(E)(4) (2002)] extended to [Name of Party], its parents, successors, subsidiaries, or assigns, shall become null and void.

18. Upon execution of this Contract, all subsequent correspondence and documentation pertaining to the requirements of this Contract, including five (5) copies of all Work Plans and Reports, shall be submitted to the following: [Project Manager], [State Remediation Section or Superfund Hydrogeology Section], Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
R. Lewis Shaw, P.E.
Deputy Commissioner
Environmental Quality Control

DATE: _____
Columbia, South Carolina

Hartsill W. Truesdale, P.E., Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Legal Office

DATE: _____

[COMPANY NAME]

Signature

DATE: _____

Printed Name and Title

DATE: _____